

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DELTA CABINET, INC.

and

Case ~~1--CA--26963~~

LOCAL 218, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,
AFL--CIO

DECISION AND ORDER

By Chairman Stephens and Member Calkins and Delaney

Upon a charge filed by the Union, Local 218, United Brotherhood of Carpenters and Joiner of America, AFL--CIO, on January 5, 1990,¹ the General Counsel of the National Labor Relations Board issued a complaint against Delta Cabinet, Inc., the Respondent, on February 15, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint,² the Respondent has failed to file an answer.

¹ All dates are in 1990 unless otherwise stated.

² Certified mail return receipt cards establish that the Respondent received both a copy of the charge and the General Counsel's March 26 letter notifying the Respondent that the General Counsel had not received the Respondent's answer to the complaint. The General Counsel could not locate the Respondent's return receipt card for the complaint. The General Counsel re-served a copy of the complaint on Respondent on May 3, but it was returned as unclaimed. The General Counsel notified the Respondent on May 24, by certified mail, that if no answer was received by June 8, a Motion for Summary Judgment would be filed. The May 24 letter was also returned as unclaimed.

We note that the Respondent's refusal or failure to claim certified mail cannot serve to defeat the purposes of the Act. Michigan Expediting Service, 282 NLRB 210 fn. 6 (1986).

On August 2, the General Counsel filed a Motion for Summary Judgment. On August 7, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the counsel for General Counsel, by letters dated March 26 and May 24, notified the Respondent that unless an answer was received, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a New Hampshire corporation with an office and a place of business in Hudson, New Hampshire, has been engaged in the manufacture, sale, and installation of cabinets at its Hudson facility, where it annually purchases and receives products, goods, and services valued in excess of

\$50,000 directly from points outside the State of New Hampshire. Annually, the Respondent, in the course and conduct of its business operations, performs services outside the State of New Hampshire valued in excess of \$50,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

On or about August 1, 1987, the Associated General Contractors of Massachusetts, Inc. (the Association) and the Union entered into a collective-bargaining agreement, which by its terms is effective for the period of August 1, 1987, through July 31, 1991. On or about August 25, 1988, the Respondent entered into an Acceptance of Agreement that bound the Respondent to the terms and conditions of employment of the 1987--1991 agreement.

The following employees of the Respondent constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

All carpenters employed by members of the Association and the employers who have authorized said Association to bargain on their behalf, including Respondent, but excluding guards and supervisors as defined in the Act.

At all times material, the Union, by virtue of Section 8(f) of the Act, has been, and is, the limited exclusive representative of the employees in the unit for the purposes of collective-bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about November 9, 1989, the Union, in writing, has requested Respondent to furnish the Union with the following information:

1. All contracts, correspondence, memoranda and any other documents that refer or relate to the nature of the relationship between Respondent and

Bryan Construction Co. in connection with the condominium project in question in Somerville.

2. All payroll records for Mark Hogue and any other documents that refer or relate to Mr. Hogue's employment status with Respondent within the year 1989.

3. All contracts, correspondence, memoranda and any other documents that refer or relate to the to the employment status of Mark Hogue or any employee of Respondent in connection with work performed at the condominium project site in Somerville.

This information is necessary for, and relevant to, the Union's performance of its function as the limited exclusive collective-bargaining representative of the unit. Since November 9, 1989, and continuing to date, the Respondent has failed and refused to furnish the Union this information. We find that by failing and refusing to furnish the requested information, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit, in violation of Section 8(a)(5) and (1) of the Act.

Conclusion of Law

By failing and refusing to furnish the information requested by the Union, the Respondent has engaged in unfair labor practice affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Delta Cabinet, Inc., Hudson, New Hampshire, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with the Union as the limited exclusive representative of its unit employees by failing and refusing to provide the Union with information requested in the Union's November 9, 1989 letter to the Respondent.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, furnish the Union with the information specified in its November 9, 1989 letter to the Respondent.

(b) Post at its facility in Hudson, New Hampshire, copies of the attached notice marked "'Appendix.'"³ Copies of the notice, on forms provided by the Regional Director for Region 1 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 28, 1990

James M. Stephens, Chairman

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively with the Union as the limited exclusive representative of our employees in the appropriate unit by failing and refusing to provide the Union with information it requested in its November 9, 1989 letter to us. The appropriate unit is as follows:

All carpenters employed by members of the Association and the employers who have authorized said Association to bargain on their behalf, including Respondent, but excluding guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish the Union with the information it requested, which is relevant to and necessary for the Union's performance of its collective-bargaining function.

DELTA CABINET, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 10 Causeway Street, Sixth Floor, Boston, Massachusetts 02222-1072, Telephone 617--565--6739.